



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9140462

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a human resources manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that she intends to continue her career as a human resources (HR) manager. She asserted that her proposed endeavor involves working "with businesses in a variety of fields to plan, direct, and coordinate the administrative functions of their organizations." The Petitioner explained that these functions include "recruitment, compensation and benefits, administration, employee regulations, employee handbooks, and occupational health and safety. In addition, she noted that her undertaking "help[s] businesses manage employee performance and development, create employers and employees' satisfaction, and minimize risk management." The Petitioner further stated:

I typically . . . provide direct support to management on HR strategic planning actions. Overall, I progressively monitor projects related to people development, and elaborate material tailored to the organization to provide training, education, and development programs focused on strategic management such as corporate adaptation/integration, leadership mentoring, and behavioral training programs.

Additionally, the Petitioner asserted that she plans "to prospect job opportunities in U.S. companies and firms." She listed 26 "companies in which I intend to pursue a job placement, as well as their current open positions, which perfectly match my career qualifications."⁴ Furthermore, the Petitioner indicated that she intends to open her own company in the United States "under the name [REDACTED] [REDACTED] will focus primarily on training people. . . . I want to create a company to help build a continuous culture of learning. . . . The trainings offered by [REDACTED] will instill a new world view in employees" She also contended that the formation of her company stands to "lead to job creation, as I will need to hire other human resource professionals like myself to assist with the offered trainings and services." The Petitioner presented the January 2019 "Articles of Organization" for [REDACTED] identifying her as its manager. In addition, she provided a notification from the Internal Revenue Service's website assigning her company an Employer Identification Number.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ Included among her list of 26 prospective "Positions Found Via LinkedIn" were "HR Consultant" jobs at Accenture, Cask, Deloitte, Wells Fargo, Vanguard, and Microsoft, for example. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

The Petitioner maintains on appeal that she “intends to continue her work as a Human Resources Manager, explicitly by enhancing the operational and workforce productivity of U.S. businesses, as well as by furthering her own consulting company . . . [REDACTED]” She asserts that she “will primarily serve as a strategic business partner, explicitly working with multiple executive leaders in implementing HR processes and operational initiatives that directly align with their respective companies’ mission and objectives.”

The record includes information about the role of HR management, maximizing human capital to create a competitive advantage, People Operations as a path to productivity, factors influencing employee happiness in the workplace, the value of operations management, the occupational outlook for HR managers, improvement of management skills and practices as a way to become more competitive, and the U.S. HR consulting industry. In addition, the Petitioner provided articles discussing the critical role of HR in making a company successful, reasons for having an effective employee development program, the history and future of operations, the scarcity of effective managers, foreign direct investment in the United States, factors contributing to a company’s success or failure, the 2019 investment management outlook, and HR function outsourcing. She also offered information about the value of HR in successful organizations, operational innovation as a contributor to business growth, methods for boosting employee engagement, factors affecting turnover rates of young managers, disruption in the corporate learning and development market, turning a business failure into a success, HR professionals’ expanding responsibilities, the challenge of attracting talented workers, and the outlook for the U.S. management consulting industry. The record therefore shows that the Petitioner’s proposed work as a human resources manager has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In her appeal brief, the Petitioner asserts that her proposed endeavor stands to “optimize the business functions of U.S. companies” and “offers broad implications to the U.S. business market, specifically through the implementation of training platforms and corporate measures that allow for workforce productivity and dependability.” She contends that her undertaking is aimed at “helping companies to achieve their productivity goals, all while enhancing the performance of workers, and consequently contributing to the substantial increase of revenues – which will positively impact the U.S. economy.” The Petitioner further argues that her proposed work “will produce significant national benefits, due to the ripple effects of her professional activities.” Additionally, she states her endeavor “will prioritize the domestic job market, and ultimately help increase the flow of money in the U.S. on regional and national levels, which will contribute to U.S. gross domestic product (GDP).”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the

Petitioner's statements reflect her intention to provide valuable HR management and consulting services for her future employers and clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her potential employers, her company, and clientele to impact the human resources field or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's HR management projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.